

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**SPECIALIZED MACHINERY
HAULING AND RIGGING, LLC,**

Plaintiff,

Case No. 3:08-cv-445

Judge Thomas M. Rose

-v-

D&L TRANSPORT, LLC, et al.,

Defendants.

**ENTRY AND ORDER DISMISSING DEFENDANT D&L TRANSPORT
WITHOUT PREJUDICE AND TERMINATING THIS CASE**

This matter arises from the delivery of a recycler oven from Quebec, Canada to Fort Meade, Florida by Plaintiff Specialized Machinery Hauling and Rigging, LLC (“Specialized Hauling”). D&L Transport, LLC (“D&L”), Drum Recyclers, Inc. (“Drum Recyclers”), Robert Kilpatrick (“Kilpatrick”) and John Does 1-99 are named in Specialized Hauling’s Complaint as the Defendants. Defendants John Does 1-99 are the unknown owners, partners, agents and/or stakeholders of Drum Recyclers. (Compl. ¶ 5.)

Specialized Hauling’s Complaint against Kilpatrick and Drum Recyclers has been dismissed due to a lack of personal jurisdiction. (Doc. #13.) Further, Specialized Hauling was given until not later than thirty (30) days after April 20, 2009, to show cause as to why its Complaint against D&L should not be dismissed for failure to obtain service on D&L. The basis for the Show-Cause Order is that Fed. R. Civ. P. 4(m) requires the Court to dismiss an action without prejudice in which service is not made within 120 days of filing a complaint.

The thirty (30) days has run and Specialized Hauling has not shown cause. There is no

record that D&L has been served, more than 120 days has run since Specialized Machinery's Complaint was filed, and Specialized Machinery has been given notice that service on D&L is required within 120 days of the filing their Complaint. Therefore, Specialized Machinery's Complaint against D&L is dismissed without prejudice. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio this Twenty-Sixth day of May, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT

JUDGE

Copies furnished to:
Counsel of Record